IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12726 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BABUBHAI N DESAI - Petitioner(s)

Versus

MANAGER - STANDARD CHARTERED BANK & 1 - Respondent(s)

==========

Appearance :

MR PRAFUL KHAKHKHAR for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 29/09/2005

ORAL JUDGMENT

In the present petition, the petitioner has challenged the legality of the order dated 24th July 2003 passed by the Ministry of Labour, Government of India. By the impugned order, the Competent Authority refused to

refer for adjudication an industrial dispute sought to be raised by the petitioner. It was stated that prima facie the Ministry did not consider the dispute fit for adjudication for the following reasons :

> "Since the applicant was working with M/s Raj Enterprises, contractor providing certain services to Standard Chartered Bank, hence is no employer-employee relationship between the Bank and Complainant. No dispute is maintainable."

2. The petitioner claimed that though he was shown to have employed initially by M/s.Raj Enterprises and thereafter by one M/s.Lovelock & Lews Services Pvt. Ltd. the same was an arrangement only for the name sake and in reality, respondent No.1 herein, Standard Chartered Bank (hereinafter to be referred to as respondent No.1 Bank) was the real employer. The petitioner also claimed that his services were terminated in June 2002 in violation of the provisions of the Industrial Disputes Act. The petitioner through his advocate issued a notice dated 26th June 2002 to respondent No.1 Bank. Respondent No.1 bank replied to the notice through their learned advocates by the communication dated 23rd July 2002. The petitioner, thereupon lodged a complaint with the Commissioner of Labour (Central) on 29th Jul6 202. Conciliation proceedings were initiated by the Assistant Labour

Commissioner (Central), Ahmedabad. Attempt to conciliate ended in failure. The Conciliation Officer, therefore, submitted his failure report dated 22nd April 2003. Eventually, respondent No.2 passed the impugned order dated 24.7.2003 refusing to refer the dispute for adjudication on the grounds mentioned herein-above. It is this decision of respondent No.2 which is under challenge in the present petition.

3. It is contended, inter alia, that the employment of the petitioner with M/s.Lovelock & Lews Services Pvt. Ltd. and M/s. Raj Enterprise was only a paper arrangement and in reality the Standard Chartered Bank was the actual employer. In fact, it was precisely with this case the petitioner had approached the authorities under the Industrial Disputes Act. In letter dated 28.7.2002 written to the Commissioner of Labour (Central), the petitioner had urged, inter alia, that though as per the reply of the Bank there was master and servant relationship between Lovelock and Lewes Services Pvt. Ltd. and the complainant, the so called contractors were changing, but his services with the Bank have been continued which shows that he was an employee of the Bank and not of the so-called contractors. He had, therefore,

contended that his termination by the Bank is illegal and void. It appears that some documentary evidence was also sought to be relied upon before the Conciliation Officer and before the Government to canvass that the petitioner was an employee of respondent No.1 Bank and the so-called employment by the contractor was only a camouflage.

4. Whether the petitioner was employed by respondent No.1 Bank or not and whether the petitioner was employed by the contractor or not were the questions which were required to be considered and decided by the competent court under the Industrial Disputes Act. When the petitioner had made out a prima facie case for consideration of such questions, it was not open for the Government while deciding the question whether the industrial dispute was required to be referred for adjudication or not to conclude such dispute by refusing to refer the dispute for its adjudication. As noted earlier, the only reason indicated for refusing to make a reference was that in the opinion of the Government the petitioner was working with M/s.Raj Enterprises, a contractor providing certain services to respondent No.1 Bank and that there is no employer-employee relationship

between the Bank and the petitioner. As noted earlier, from the outset, it was the assertion of the petitioner that though by way of paper arrangement the petitioner is shown to have been employed by the contractor, the same was only for name sake and that the real employer was respondent No.1 Bank. When the petitioner approached the authorities under the Industrial Disputes Act with such an averment and also produced some material in support of such a case, respondent No.2 ought not to have refused to refer such a dispute for adjudication. Refusal to make a reference would amount to virtually deciding the dispute by the Central Government which is not permissible under the Industrial Disputes act.

5. In the case of Hitendra Vrajlal Trivedi v. Deputy Labour Commissioner, 2004 (3) GLH UJ 1, following observations were made by this Court in para 9, 10 and 11 of the judgment.

> “In the decision of the Hon'ble Supreme Court in the case of The M.P. Irrigation Karmachari Sangh v. State of M.P. And anr. reported in AIR 1983 SC 860, it has been observed that there may be exceptional cases in which the State Government may on a proper examination of the demand come to a conclusion that the demands are either perverse or frivolous and do

not merit a reference. The Hon'ble Supreme Court has held that the Government should be very slow to attempt an examination of demand with a view to decline reference and the Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. The Hon'ble Supreme Court in paragraph 7 of its judgment has observed as follows:

> “There may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Government should be very slow to attempt an examination of the demand with a view to decline reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. To allow the government to do so would be to render S.10 and S.12 (S) of the Industrial Disputes Act nugatory.”

10. Yet in another decision of the Hon'ble Supreme Court in the case of Sharad Kumar v. Govt. of NCT of Delhi and ors. reported in AIR 2002 SC 1724, it is observed that where determination of any question requires examination of factual matters for which materials including oral evidence will have to be considered, the State Government could not arrogate on to itself the power to adjudicate on the question and hold that the respondent was not a workman within the meaning of Section 2 (s) of the Act, thereby terminating the proceedings prematurely. Such a matter should be decided by the Industrial Tribunal or Labour Court on the basis of material

placed before it by the parties.

11. In the decision reported in AIR 1989 SC 1565 (Telco Convoy Drivers Mazdoor Sangh and anr. vs. State of Bihar) also the Hon'ble Supreme Court has observed that appropriate Government while considering question whether reference should be made or not cannot delve into merits of dispute and determine the lis itself."

6. In view of the above decisions, it can be seen that the appropriate Government has extremely limited jurisdiction to refuse to refer an industrial dispute which is existing or apprehended and it is not open for the appropriate Government to decide the lis between the parties and to terminate the dispute prematurely. In the present case, as noted earlier, the petitioner had approached the Conciliation Officer and the Central Government seeking reference of his industrial dispute claiming that though he was actually employed by the contractor but his real employer was respondent No.1 Bank. It was, therefore, not open for respondent No.2 to refuse to refer the dispute for its adjudication for the reasons noted herein above.

7. In the result, the impugned order dated 24th July

2003 is quashed and set aside. Respondent No.2 is directed to take a fresh decision regarding the question of referring the dispute of the petitioner for its adjudication before the appropriate Labour Court/Industrial Tribunal bearing in mind the observations made herein-above. Such decision shall be taken within a period of two months from the date of receipt of a copy of this order. The petition is allowed to the above extent. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)